IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 810

HALLIBURTON OIL WELL CEMENTING COMPANY,
Petitioner,

v.

DANIEL D. PAULK AND
TEXAS EMPLOYERS' INSURANCE ASSOCIATION,
Respondents

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinion Below

The opinion of the Court of Appeals (Fifth Circuit) is reported in 180 F. (2d) 79.

Jurisdiction

The judgment of the Court of Appeals was entered on February 16, 1950 (R. 415). The jurisdiction of this Court is sought to be invoked under Section 1254 (1), Title 28, UNITED STATES CODE.

Statement of the Case

The facts of the case are more fully and accurately stated in the opinion of the Court of Appeals than in the Petitioner's Brief.

Question Presented

Does the record contain substantial evidence supporting the determination that Petitioner was responsible in damages for injuries resulting from the negligence of Petitioner's employee in the operation of machinery under the joint control and direction of Petitioner and Francitas?

Argument

The Court of Appeals correctly applied the well-established Texas lent-servant rule to the fact issues properly submitted to the jury and determined adversely to Petitioner.

The fundamental fallacy of Petitioner's argument is that Petitioner has attributed to the Court of Appeals a holding which the Court did not make and which Petitioner *admits* (Petitioner's Brief, page 12) that the Court had no intention of making. It is *not* correct that the Court of Appeals held as a matter of law (as distinguished from a question of fact) that Harvey remained in the employ of Petitioner. Nor is it correct, as stated by Petitioner, that the Court of Appeals held that the right to control Harvey in the details of his work was not the criterion for determining who was his master.

The jury found that at the time of Petitioner's injury, the Halliburton equipment was being operated *under the control and direction* of Francitas and Halliburton; that Harvey,

in releasing the pressure into the hose which struck Paulk was acting as an *agent, servant or employee* of both Francitas and Halliburton, and that this was negligence which was a proximate cause of the injury to Paulk. (Italics added.)

It was not necessary for the Court of Appeals to determine as a matter of law the ultimate question as to Harvey's employment and who had the right to control him in the details of his work, and an intention to do so cannot be gathered from the opinion of the Court. The Court simply held that the evidence and findings of the jury, which necessarily involved the criterion of right to control as well as actual control, were sufficient under the well-established Texas law to establish responsibility upon Petitioner for the damages resulting from their employee's negligence.

The Court of Appeals, after carefully reviewing the evidence, found that the evidence was sufficient to prove the following:

1. Halliburton's crew placed the truck and equipment in such position and arrangement as they thought best and proceeded to the execution of the job to be done through the employment of Halliburton's specialized equipment, operated by the specialized Halliburton employees (R. 185, 196, 205).

2. The knowledge and skill of Halliburton crew members is not possessed by others not so specially trained, not even those skilled and experienced in oil well work in general (R. 294).

3. McDowell, Francitas' field superintendent, even though a skilled oil field man of many years, could not operate the equipment and had never been in charge or con-

trol of it on any of the jobs he had done in many years of work in oil fields (R. 186, 189).

4. McDowell's sole direction and control was to give the depth the tool was to be placed and pressure he wanted on the well (R. 211).

5. To accomplish the desired results, McDowell understood that the Halliburton men were supposed to do what he told them, but as to telling them how to do it, "Halliburton's men are supposed to be specialists on their job." (R. 207.)

6. McDowell "turned the job over to the Halliburton crew." (R. 211.)

7. Halliburton company rules do not permit anybody except Halliburton men to operate the Halliburton equipment (R. 294).

8. The Halliburton service is a highly specialized operation requiring expensive, specially made, and in some instances, patented equipment (R. 292, 293).

TABLE 6

In addition to the foregoing evidence, which is set forth in the opinion of the Court of Appeals, there was other proof that Harvey was in charge of the Halliburton men and equipment, that the Halliburton men worked under Harvey and took their instructions and orders from him, that Harvey was in full charge, supervision and control over the Halliburton men and equipment (R. 337, 338, 339), that McDowell did not know anything about operating the Halliburton equipment and had never been in charge or control of Halliburton equipment (R. 186, 189).

It can readily be seen that the Court of Appeals after considering the entire record has held that the question

submitted to the jury constituted a fair and adequate submission of the question of who had the right to control and direct the work of Harvey at the time of the accident, and that there was sufficient evidence to support the findings of the jury in that connection.

The Court of Appeals' decision is not in conflict with applicable local decisions. The loaned-servant doctrine is admittedly recognized in Texas, and in applying that doctrine the test in determining responsibility for the tortious act of a so-called "loaned-servant" is to ascertain who had the right to control the details of the loaned-servant's work at the time of the tortious act. Respondents do not say that these are not the rules. On the contrary, Respondents say they are the rules and that the rules have been properly applied in this case. The jury found that all of the Halliburton equipment was under the direction and control of both Halliburton and Francitas at the time of Paulk's injury and that Harvey at that time was acting as an agent, servant and employee of both Halliburton and Francitas. These findings mean that both Halliburton and Francitas, through Harvey, were controlling the details of the work being done by the Halliburton crew and with the Halliburton equipment when Paulk was injured and of necessity had, under the over-all circumstances, the *right* to do so. The findings could mean nothing else. The criterion of right of control was not ignored, although the Trial Court may have chosen not to submit the issue precisely as Petitioner requested it. It is the substance not mere form which controls here, and which impressed the Court of Appeals in upholding the judgment of the lower court.

The cases cited by Petitioner fail to support the Petitioner's contentions. They are cited as authority for the general rules which Respondent concede are applicable. In fact,

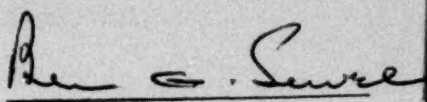
the one case cited by Petitioner in which the facts are identical with those in this case is HERNDON v. HALLIBURTON OIL WELL & CEMENTING COMPANY, 154 S.W. (2d) 163, and in that case judgment for the injured party against Halliburton based on a jury verdict was affirmed by a Texas Court of Civil Appeals, and the Supreme Court of Texas refused for want of merit an application for a writ of error. In the HERNDON case the Texas Court reviewed evidence strikingly similar to that in this case and held, as did the Court of Appeals, that the jury findings against Halliburton were supported by the evidence.

The fact that in this case the jury has found that Harvey and the Halliburton equipment were under the control and direction of both Halliburton and Francitas at the time of Harvey's negligent act does not differentiate the case from the HERNDON case for it is undoubtedly the Texas Law that an employee may be jointly employed by two employers in such fashion that both employers will be jointly and severally liable for the tortious acts of such employees. AMERICAN EXPRESS COMPANY, ET AL., v. CHANDLER, 231 S.W. 1085 (Tex. Com. App.), 1921—opinion adopted by Supreme Court; FOREMAN v. ARMOUR, 65 S.W. (2d) 334 (Tex. Civ. App.)—writ of error refused by Sup. Ct.

It is also equally clear that under the Texas decisions the written contract between Halliburton and Francitas is not binding on the Respondents, but on the contrary, the Respondents are entitled to show whether Halliburton actually surrendered control of the details of the job to Francitas or retained such control in whole or in part in its own experienced and highly trained operators. HUMBLE OIL & REFINING CO. v. MARTIN, 222 S.W. (2d) 995 (Tex. Sup. Ct., 1949). This the Respondents have done and the jury has made findings favorable to them on these questions.

Conclusion

The Petitioner's Application for Writ of Certiorari should be denied.



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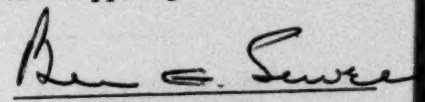
I hereby certify that copies of the foregoing brief of Respondents have been delivered to opposing counsel.



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